

### **307 KAR 4:010. Kentucky Industrial Development Act Tax Credit Program.**

RELATES TO: KRS 154.28-010-154.28-090

STATUTORY AUTHORITY: KRS 154.28-030(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Industrial Development Act Tax Credit Program established pursuant to KRS 154.28-010 through 154.28-090.

Section 1. Definitions. (1) "Act" means KRS 154.28-010 through 154.28-090.

(2) "Agribusiness" is defined in KRS 154.01-010.

(3) "Approved company" is defined in KRS 154.28-010.

(4) "Authority" is defined in KRS 154.28-010.

(5) "Commonwealth" is defined in KRS 154.28-010.

(6) "Economic development project" is defined in KRS 154.28-010.

(7) "Eligible company" is defined in KRS 154.28-010.

(8) "Inducement" is defined in KRS 154.28-010.

(9) "Manufacturing" is defined in KRS 154.28-010.

Section 2. Economic Development Project; Acquisition of Real Estate. "Economic development project" shall include for purposes of acquisition of real estate capital leases as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, which is incorporated by reference in Section 7 of this administrative regulation.

Section 3. Eligible Company; Corporation. "Eligible company" shall include as a corporation a limited liability company and foreign limited liability company each as defined in KRS 275.015 and as a partnership a registered limited liability partnership as defined in KRS 362.155.

Section 4. Eligibility Standards. (1) The authority shall approve eligible companies based upon the information supplied to the authority in the application, pursuant to Section 5(1)(a) through (g) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Industrial Development Act Tax Credit Program the authority shall give greatest weight to the information supplied in the application pursuant to Section 5(1)(a) through (d) of this administrative regulation.

Section 5. Kentucky Industrial Development Act Tax Credit Program. (1) Companies that wish to participate in the Kentucky Industrial Development Act Tax Credit Program shall file an application with the authority. The following information and materials shall be submitted as part of the application:

(a) A brief history of the business of the eligible company and a description of the economic development project;

(b) Copies of the eligible company's financial statements for the most current fiscal year end;

(c) The projected number of employees to be hired in the future at the manufacturing or agribusiness facility of the eligible company from the commencement date of the financing agreement and as a result of the receipt of the inducements. For purposes of this subsection, a full-time job shall mean a job whose work week averages thirty-five (35) or more hours. As a part of its analysis pursuant to this paragraph the authority shall consider the following information:

1. The current number of full-time and part-time jobs at the project location;

2. The total number of full-time and part-time jobs projected two (2) years after project completion; and

3. The number of managerial and technical jobs and skilled, semiskilled and unskilled jobs (based on the level of specialized training required to perform the particular job competently), created by the economic development project and the average hourly wage and average salary for each job category. For purposes of the foregoing sentence, the term "unskilled" describes those jobs which require no specialized training to perform the job competently. Likewise, "semiskilled" describes those jobs which require forty (40) hours or less training to perform the job competently. "Skilled labor" shall designate:

- a. Those possessing a certificate or degree from an accredited vocational-technical school, college or university;
- b. Persons who have been independently licensed in a specific occupation, and who, as a requirement for employment in a job category, must hold such a certificate or diploma; or
- c. Persons who have completed an apprenticeship as a requirement for being certified by a union.

The term "managerial" describes those jobs which primarily involve supervising other employees of the company. The term "technical" describes those jobs which involve an expertise or knowledge specific to the particular industry of the eligible company. Those jobs which are described by both "technical" and another category shall be classified as "technical".

(d) Estimated annual revenues and expenses for a three (3) year period after the date of commencement of operations of the business of the eligible company at the site of the economic development project;

(e) A statement from the eligible company that the project does or does not involve:

- 1. A relocation from an existing facility; or
- 2. The acquisition of an existing facility.

(f) A letter from the eligible company providing information required pursuant to KRS 154.28-080(4);

(g) The effect of an expansion on the existing manufacturing or agribusiness facilities of the eligible company;

(h) The lending source for the project;

(i) A letter from the appropriate local elected official (Mayor and/or County-Judge Executive) endorsing the project; and

(j) 1. A completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form.

2. The Disclosure Statement and Data Form are incorporated by reference in Section 7 of this administrative regulation.

(2) The application to be filed with the authority shall contain notices of the following fees to be paid by the eligible company:

(a) An administrative fee of one-quarter (.25) of one (1) percent of the estimated approved costs for the entire period which is due and payable upon execution of the financing agreement;

(b) A \$500 nonrefundable application fee which is due and payable to the authority upon the submission of the application;

(c) The one (1)-time \$2,500 fee required by KRS 154.35-042(1);

(d) The annual five (5) percent fee required by KRS 154.35-042(2); and

(e) The legal fees for the preparation of the financing agreement by the authority's counsel which are payable upon execution of the financing agreement.

(3) Pursuant to KRS 154.28-080(5) the authority may designate an eligible company to be an approved company after consideration of the application for the Kentucky Industrial Development Act Tax Credit Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 6. Financing Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of a financing agreement pursuant to KRS 154.28-090:

- (1) Annual, quarterly or monthly progress reports to the authority;
- (2) Annual, quarterly or monthly financial reports to the authority; and
- (3) Access to the approved company's records.

Section 7. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The "Application for the Kentucky Industrial Development Act ("KIDA") Tax Credit Program-KRS 154.28" which also includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" (June 12, 1995); and

(b) The "Statement of Financial Accounting Standards No. 13, Accounting for Leases" (June 1, 1989).

(2) Copies of the "statement" and the form of "application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday. (22 Ky.R. 135; Am. 593; 720; eff. 8-17-95.)